

OCT 23 2009

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

JOHN F. CORCORAN, CLERK
BY: 
DEPUTY CLERK

UNITED STATES OF AMERICA

CASE NO. 1:04-cr-00067-1

v.

2255 MEMORANDUM OPINION

CECIL EDWARD WAMPLER, JR.

By: Hon. James C. Turk
Senior United States District Judge

Petitioner Cecil Edward Wampler, Jr., a federal inmate proceeding pro se, filed a motion to vacate, set aside or correct sentence, pursuant to 28 U.S.C. § 2255. Upon review of the record, the court concludes that the action must be dismissed as successive.

A district court may consider a second or successive § 2255 motion only upon specific certification from the Fourth Circuit Court of Appeals that the claims in the motion meet certain criteria. See § 2255(h). Court records indicate that petitioner has previously filed § 2255 motions, Civil Action No.s 1:09-cv-80194, 1:08-cv-80020, 1:09-cv-80133, and 1:09-cv-80178, regarding the same conviction and/or sentence. Thus, petitioner's current § 2255 motion is a second or subsequent one under § 2255(h). As petitioner has not submitted any evidence of having obtained certification from the United States Court of Appeals for the Fourth Circuit to file a second or successive § 2255 motion, the court must dismiss the action without prejudice. An appropriate order will issue this day.

Petitioner is hereby advised of the procedure for obtaining certification from the Fourth Circuit Court of Appeals to have a district court review a successive § 2255 motion. Petitioner must submit a copy of the successive § 2255 motion to the Fourth Circuit Court of Appeals with a motion requesting a three-judge panel certification that the district court may

review the successive § 2255 motion. See 28 U.S.C. § 2244. A Fourth Circuit Court of Appeals form and instructions are available from the Fourth Circuit Court of Appeals at the following address: Office of the Clerk, United States Court of Appeals for the Fourth Circuit, 900 E. Main St., Richmond, VA 23219.

Petitioner is further advised that he may appeal this decision, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure, if a circuit court of appeals justice or this court issues a certificate of appealability, pursuant to 28 U.S.C. § 2253(c). If petitioner intends to appeal and seek a certificate of appealability from the Fourth Circuit Court of Appeals, his first step is to file a notice of appeal with this court within sixty (60) days of the date of entry of this Memorandum Opinion and Order or within such extended period as the court may grant pursuant to Rule 4(a)(5).

The Clerk is directed to send copies of this Memorandum Opinion and the accompanying Order to petitioner and to counsel of record for respondent.

ENTER: This 23rd day of October, 2009.


Senior United States District Judge